



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

STATEHOUSE * ROOM 116 * DES MOINES, IOWA 50319 * (515) 281-3084/3355
FAX (515) 281-5995/4424 * E-MAIL jroyce@legis.state.ia.us

THE RULES DIGEST

February, 2004

Scheduled for committee review
MONDAY, February 9th 2004
Statehouse Room #116

Reference
XXVI IAB No. 14(01/07//04)
XXVI IAB No. 15(01/21/04)

HIGHLIGHTS IN THIS ISSUE:

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CULTURAL AFFAIRS

10:50

Certified cultural and entertainment district, IAB Vol. XXVI, No. 14, ARC 3110B, NOTICE.

§303.3b, 2003 supplement creates a cultural and entertainment district certification program, with the goal of encouraging the growth of community areas for cultural and entertainment purposes. The district may not be larger than one square mile in size. Under existing law cultural grants are available at a 50% match. Tax benefits, including tax credits under Iowa Code section 404A.4, may also be awarded from the department of economic development for substantial rehabilitation work on historic buildings.

A city or county may designate a district, which must be certified by the department of cultural affairs, in consultation with the department of economic development. Under the proposed rules each applicant must affiliate with a local community nonprofit organization in order to form a district.

Applications to create districts will be reviewed on a competitive basis; the rules do not set out detailed, weighted criteria, but general factors are listed. These factors for evaluation include:

- Management structure.
- Presence of cultural assets.
- Level of community support.
- Local incentives.
- Plan for developing and sustaining the district.

Applications will be reviewed by department staff and an advisory committee; the final decision is made by the director of the department.

ECONOMIC DEVELOPMENT DEPARTMENT

10:40

University-Based Research Utilization Program, IAB Vol. XXVI, No. 15, ARC 3109B, ADOPTED.

House File 692 calls on the department to create a program to assist Iowa business in making university research, particularly high-tech research, available for commercial development. Participating businesses and university employees may receive a tax credit. The total aggregate value

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of the credits issued over a 5 year period to an approved business cannot exceed \$600,000.

For the approved business, the value of the tax credit equals 30% of the tax liability of the business, up to \$225,000. For the university employee the value of the credit equals 10% of the tax liability for the business.

For the employing Regents institution the department will annually make a determination of calculate 30% percent of the tax liability of the approved company; this amount will then be appropriated to the institution budget from the general fund of the state. An appropriation cannot exceed \$250,000 per year for each patented technology or exceed \$600,000 over five years.

An Iowa business utilizing technology developed by an employee in a Regents institution may apply for assistance if:

- The technology has received a patent. Companies in existence for more that one year must spin off a separate company to utilize the technology;
- The company has developed a five year plan, approved by the department;
- The company must have at least one full-time equivalent employee or will have at least two full-time equivalent employees within one year of approval of the application; and,
- The company provides annual reports to the department including employment statistics for the company and the total taxable wages paid to Iowa employees.

EDUCATIONAL EXAMINERS

No Rep

Code of professional ethics, IAB Vol. XXVI, No. 13, ARC 3089B, NOTICE.

For the first time in over 15 years the board proposes to re-write the code of ethics for all licensed professions under the boards' jurisdiction. The proposal sets out seven general standards, each standard is then set out in detail. Standard I deals with the most serious ethical or professional lapses: criminal convictions, sexual conduct with a student, and child or adult abuse; this section also includes fraud in procuring the professional license. This standard details acts that constitute automatic disqualification, they include violent felonies and

sexual offenses. Other offenses under these rules will be evaluated on a case-by-case basis using the criteria set out in Code §272.2:

- The nature and seriousness of the crime or founded abuse in relation to the position sought;
- The time elapsed since the crime or founded abuse was committed;
- The degree of rehabilitation which has taken place since the crime or founded abuse was committed;
- The likelihood that the person will commit the same crime or abuse again;
- The number of criminal convictions or founded abuses committed; and
- Such additional factors as may in a particular case demonstrate mitigating circumstances or heightened risk to public safety.

Some acts constitute a violation of the ethical standards regardless of any criminal action; these include having a romantic or inappropriate relationship with a child; committing an act of abuse; or providing drugs or alcohol.

The remaining seven standards deal with non-criminal situations and behavior. Standards II through V and VII and VIII set out relatively common standards. Standard II relates to alcohol or substance abuse while in the presence of students. Standard III relates to the falsification of information. This includes person credentials, investigations, required governmental reports or student information. Standard IV relates to the misuse of public property or funds. Standard V relates to violating a contractual obligation with the employing school district. Standard VII requires compliance with state law governing student loan obligations and child support obligations. Standard VIII is incompetence.

Standard VI is completely new and relates to unethical practice toward other professionals, parents, students, and the community. This standard sets out a long list of examples, including suppressing or distorting educational material; improperly denying a student access to a different point-of-view; repeatedly exposing the student or other members of the profession to unnecessary embarrassment or disparagement; unlawful discrimination.

EDUCATIONAL EXAMINERS

No Rep

Professional rights and responsibilities, IAB Vol. XXVI, No. 13, ARC 3090B, NOTICE.

As an adjunct to the code of professional conduct the board also proposes a code of rights and responsibilities for licensees. This is a unique concept in licensing. Boards traditionally set out the grounds for imposing discipline and establish a general code of ethics; this proposal more clearly defines the obligations of an educator and sets out some general rights that an educator may claim. This new concept in licensing begins with an enumeration of educator rights. Under this concept the exercise of these rights and responsibilities may present mitigating facts and circumstances where the board considers allegations of unethical practice or misconduct. The rights set out in this proposal basically already exist, but are now set out in rule form; they include:

- a right to be licensed and endorsed as provided by law;
- a right to refuse assignments for which the educator the appropriate endorsement or approval;
- a right, subject to board and administrator authority, to exercise professional judgment in the evaluation, selection, and use of teaching methods and instructional materials appropriate to the needs, abilities, and backgrounds of each student.

The rule also sets out a list of 16 teacher responsibilities; as an example a summary of these standards include:

- Mandatory reporting of any violation of the code of professional conduct and to cooperate in any investigation.
- A responsibility to maintain and improve professional competence.
- A responsibility to accept only assignments for which the educator is legally authorized and to maintain a safe and effective learning environment.
- A prohibition, "without just cause", from restraining independent student learning action or denying a student access to varying points of view.
- A prohibition against discrimination based on national or ethnic origin, religion, age, sex, disability, sexual orientation, or marital status, and a prohibition against granting "any discriminatory consideration or advantage".

The rights proposed in this filing have a clear function; they can provide at least a partial defense against professional complaints. For example, an educator cannot be disciplined for refusing to teach a course for which the educator does not have the appropriate endorsement or approval. However, it is unclear how the 16 enumerated responsibilities tie into the eight professional conduct standards set out in the ethics proposal; none of the 8 standards specifically reference either the rights or responsibilities. It is also unclear how these responsibilities will be applied, if at all, as part of the licensee disciplinary process. Lastly, the role this list of responsibilities might play in civil litigation, either against the district or the employing district, should be considered. Failure to comply with a state standard can possibly be used as evidence of negligence or liability in a judicial action.

EDUCATIONAL EXAMINERS

No Rep

Superintendent/AEA administrator, IAB Vol. XXVI, No. 14, ARC 3090B, NOTICE.

The board proposes a joint endorsement for superintendents and AEA administrators; in addition the rule adds new criteria which include national standards for "school leaders". These new standards include:

- Developing a shared vision of learning through articulation, implementation, and stewardship.
- Advocating, nurturing, and sustaining a school culture and instructional program conducive to student learning and staff professional growth.
- Ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment.
- Collaborating with school staff, families, community members and boards of directors; responding to diverse community interests and needs; and mobilizing community resources.
- Acting with integrity, fairness, and in an ethical manner.
- Understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context.

ENVIRONMENTAL PROTECTION COMMISSION

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11:15

Health effects value, IAB Vol. XXVI, No. 13, ARC 3092B, NOTICE.

This proposal is the second attempt by the department to regulate odor emissions relating to animal feeding operations. In April of 2003, the Department of Natural Resources proposed outdoor air quality standards for hydrogen sulfide and ammonia to apply to all outdoor air in Iowa, not just air near concentrated animal feeding operations (ARC 2465B, 5/14/03 IAB). This effort was deemed too broad by the legislature and nullified (SJR 5).

In 2004 the EPC tries a narrow approach, regulating hydrogen sulfide as measured from separated locations near confinement feeding operations. No ammonia standard is proposed. The EPC states this is not an emission standard and places no specific limitation on the feeding operation itself. Authority is found in Iowa Code section 459.207 states that:

“ . . . comprehensive plans and programs may be developed if the baseline data from the field study demonstrates to a reasonable degree of scientific certainty that airborne pollutants emitted by an animal feeding operation are present at a separated location at levels commonly known to cause a material and verifiable adverse health effect.”

No standard to implement this provision may be effective prior to December 1, 2004.

Citing the 2002 study by ISU/UI the EPC proposes to set the health effects value for hydrogen sulfide at 15 ppb for animal feeding operations; this measure is the daily maximum one-hour average as measured near a separated location. The health effects value is defined as the level of a pollutant “commonly known to cause a material and verifiable adverse health effect.”

The proposal also sets a health effects standard for hydrogen sulfide---also set at 15 ppb. This standard is the level required to trigger plans and programs to abate emissions of airborne pollutants. This standard, measured in one hour increments, cannot be violated more than seven times per year.

The preamble states there will be a narrow construction to the term “separated location”. A

location will be determined based on several factors:

- The location predates the feeding operation;
- The statutory separation distances were in place and applicable to the operation at that time;
- No waiver had been granted by the landowner; and,
- The operation is in compliance with the required separation distance.

These criteria are not specified in the rule itself; instead it is part of the air sampling manual.

ENVIRONMENTAL PROTECTION COMMISSION

11:15

General revision: water regulation, IAB Vol. XXVI, No. 14 ARC 3094B, ADOPTED.

In response to a federal rulemaking pertaining to drinking water the EPC must revise many of its rules in that area. Affected chapters each contain numerous amendments:

- Chapter 40 relating to private and public drinking water supplies;
- Chapter 41 relating to analytical methods and monitoring;
- Chapter 42 relating to public notification of violations;
- Chapter 43 relating to water supplies;
- Chapter 44 relating to the Drinking Water State Revolving Fund;
- Chapter 81 relating to treatment plants;
- Chapter 83 relating to certified laboratories.

The fees imposed on testing laboratories was controversial when these rules appear in October. The significant issue with this proposal is the revision of Chapter 83. Starting at item 150, a series of fees imposed on testing laboratories are being revised and increased. The fees have not been raised in ten years. Under Iowa law laboratories which analyze samples for waters supplies, underground storage tanks or wastewater treatment must be certified by the EPC. As part of this certification process a laboratory must demonstrate “...to the satisfaction of the department its ability to consistently produce valid data...” Chapter 83 sets out a series of fees and expenses which vary according to the analyses performed by the lab; the cost is cumulative. The proposal now sets out a chart listing the analyses

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and the required fees; the chart is new and does not match the existing framework, making line-by-line comparison difficult, but the average seems to be between 25% and 33%. There are examples: inorganic analysis is raised from a flat \$1200 to a maximum of \$1600, depending on the number of analytes; dioxin analysis is raised from \$600 to \$800; effluent toxicity is raised from \$600 to \$800; asbestos from \$300 to \$400; radio nuclides from \$300 to \$400. Opponents contend this increase is excessive, while EPC representatives respond that the fees are necessary to pay the contractors who perform the actual inspections; department representatives also state the fee are less than those charged in Minnesota or Wisconsin.

Part of those concerns have been addressed; the fee structure has been revised to add multiple programs for the same analytical groups for the inorganic compounds, volatile organic compounds, synthetic organic compounds, and underground storage tank analytical group.

ETHICS AND CAMPAIGN DISCLOSURE BOARD

9:45

Use of public property for political purposes, IAB Vol. XXVI, No. 13, ARC 3047B, NOTICE.

Due to time constraints these rules were held over from the January meeting. The board offers a complete re-write of its rules relating to the political use of public property. This has *never* been simple. For example, at one point it was thought that a deputy sheriff running for the office of sheriff could not campaign in uniform, unless the deputy in fact paid for the clothing, in which case the deputy could. Under these common-sense guidelines public property generally cannot be used for political purposes. However, things like using government property for a public forum or for a debate would be allowable. Renting a site out, for fair value, is also permitted. The use of job titles and job-related uniforms is permitted.

The proposal also sets out some specific prohibitions. Using public property to solicit contributions or votes is prohibited. Using public vehicles or public equipment for campaign

purposes is prohibited. A private vehicle with a campaign placard attached cannot be parked on public property for more than 24 hours. Campaign material cannot be placed on public property or a right-of-way for more than 24 hours.

A particularly important provision relates to ballot issue advocacy. Subrule 5.4(1) states:

5.4(1) General prohibition. Unless one of the exceptions in rule 351—5.5(56) applies, the public officials and public employees of the state, county, city, public school, or other political subdivision shall not permit public resources to be used to expressly advocate the nomination, election, or defeat of a candidate or to *expressly advocate the passage or defeat of a ballot issue*.

This provision clearly prohibits any public official, on any branch or level of government, from using government property or resources to advocate either the passage or defeat of a ballot issue. This most commonly occurs with local issues like a tax levy, but the limitation applies to advocacy at any level of government.

HUMAN SERVICES DEPARTMENT

9:00

Independent living, IAB Vol. XXVI, No. 14, ARC 3117B, NOTICE.

The department proposes a series of small but important amendments to the independent living component of the foster care program---now to be called “supervised apartment living”. The program is designed for 16-17 year olds who are capable of living in a less structured environment. The biggest changes involve:

- Allowing 18-20 year olds to re-enter the program in order to complete high school or attain a GED.
- Removing requirements that participant must refrain from illegal behavior such as the use of drugs or alcohol.
- Eliminating the current requirement that the participant potential to be financially and emotionally independent upon discharge.
- Requiring juvenile court approval for placement of youth who are under the age of 18.
- Remove the cap on the number of hours of service that may be purchased.
- Require face-to-face visits weekly with youth under age 18 and biweekly with youth aged 18 or over.

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INSPECTIONS AND APPEALS DEPARTMENT

10:15

Care facilities & veterans benefits, IAB Vol. XXVI, No. 13, ARC 3081B, NOTICE.

§135C.31A, supplement 2003, requires a health care facility receiving Medicaid reimbursement to assist the Iowa commission of veterans affairs in identifying a resident's eligibility for benefits through the federal department of veterans affairs. Under these proposed rules The facilities must provide the information not only to the commission on veteran's affairs, but the department of human services as well. If the resident is unable to provide the required information, the facility must seek the information from the resident's family members or responsible party. For new admissions, the facility must provide the report to the Iowa commission on veterans affairs within 30 days of admission. For current residents the report must be filed within 90 days of the effective date of these rules. If alternative benefits are available the facility is required to first seek reimbursement from those sources before seeking payment from Medicaid.

INSPECTIONS AND APPEALS

10:15

Registered amusement devices, Vol. XXVI, No. 13, ARC 3080B, ADOPTED.

2003 Acts, Chapter 147 provides for the annual \$25 registration of every "electrical and mechanical amusement device" which dispenses a prize. These devices are similar to video slot machines; upon winning, the player receives a paper slip awarding a prize. The Act provides that prizes are redeemable only at that premises and only for merchandise regularly sold at the premises. Qualified non-profit organizations can have up to four machines (eg: vet clubs) while other establishments (eg: bars or convenience stores) can have two. In short, these are video slot machines, located in service clubs and bars, awarding food and drink prizes instead of cash.

In addition, the Act requires that registered machines must be purchased from a manufacturer, manufacturer's rep. or distributor which also has

been registered with the department. These annual registrations are \$2,500. Under the rules the term "distributor", and hence the \$2,500 annual fee, does not apply to a person who owns a device but does not intend to sell or lease it to another.

INSURANCE DIVISION

No Rep

Credit information in personal insurance, IAB Vol. XXVI, No. 14, ARC 3106B, NOTICE.

The division proposes to adopt a national association model relating to the use of credit information as part of the application process for "personal insurance". This insurance includes private auto, motorcycle, mobile-homeowners and other noncommercial policies which are individually underwritten for personal, family or household use.

The rules set out a series of restrictions for companies that use credit information as part of the underwriting process. These restrictions prohibit:

- Use income, gender, address, ZIP code, ethnic group, religion, marital status, or nationality of the consumer as a factor.
- Deny, cancel or nonrenew a policy of personal insurance solely on the basis of credit information. Base renewal rates for personal insurance solely upon credit information.
- Take an adverse action because the consumer does not have a credit card account or if the credit report is more than 90 days old.
- Consider an absence of credit information or an inability to calculate an insurance score in underwriting.
- Use credit information unless the score is updated at least every 36 months, based on updated credit reports.
- Use certain specified 'credit inquiries' as part of the scoring.

In the event an adverse action is taken by the insurer based on credit information, the applicant must be informed of that fact.

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